



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Richard J. Heffley

JUN 17 2010

Tallahassee, Florida 32312

RE: MUR 6244  
Richard J. Heffley  
Heffley & Associates, Inc.  
Strategic Directions.com, Inc.

Dear Mr. Heffley:

On December 29, 2009, the Federal Election Commission notified Heffley & Associates, Inc., Strategic Directions.com, Inc., and you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On May 27, 2010, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe you violated 2 U.S.C. §§ 441a(a), 441b, or 441d and that there is no reason to believe Heffley & Associates, Inc. or Strategic Directions.com, Inc. violated 2 U.S.C. § 441b. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's finding(s), is enclosed for your information.

If you have any questions, please contact April Sands, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Mark Allen  
Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**MUR 6244**

**RESPONDENTS:** Richard Heffley; Heffley and Associates, Inc.;  
and Strategie Direction.com, Inc.

**I. INTRODUCTION**

The complaint alleges that lobbyist Richard Heffley and an unnamed collaborator launched a website on October 27, 2009, that attacked U.S. Senate candidate Marco Rubio, the Republican primary opponent of Governor Crist at that time. The complaint claims that, because Mr. Heffley is a "common vendor" for the website, <http://truthabouttruhio.com>, and for the Crist Committee, the website is a coordinated communication in violation of the Federal Election Campaign Act of 1971, as amended ("the Act"). Further, the complaint alleges that if Mr. Heffley used his lobbying corporation or political consulting group to pay for the website, then the coordination would have constituted an illegal corporate contribution to the Crist Committee. The complaint further alleges that Mr. Heffley is a paid consultant of the Republican Party of Florida and that he shares office space with the Crist Committee and the Republican Party of Florida. Finally, the complaint alleges that the website lacked a disclaimer. Because it does not appear that any costs associated with the [truthabouttruhio.com](http://truthabouttruhio.com) website are in-kind contributions to the Crist Committee, or that the website is a public communication requiring a disclaimer, the Commission finds no reason to believe that Richard Heffley violated 2 U.S.C. §§ 441a(a), 441b, or 441d. Further, the Commission finds no reason to believe Richard

1 Heffley's two companies, Heffley and Associates, Inc. and Strategic Direction.com, Inc.,  
2 violated 2 U.S.C. § 441b.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 Richard Heffley created truthaboutrubio.com because he supported Charlie Crist over  
5 Marco Rubio in the upcoming Florida U.S. Senate Republican primary. Heffley Response at 1.  
6 Heffley describes truthaboutrubio.com as follows:

7 The content of the website was all articles and links to articles that  
8 have appeared in places around Florida. There was no original  
9 content on the site except for several 'flash poll' questions I wrote  
10 to try and get viewers involved in the site. Nowhere on the site  
11 was there a call for the election or defeat of Crist or Rubio or any  
12 other candidate.

13 *Id.* Neither the complaint nor the responses included any screenshots of this website. Heffley  
14 states that the website was coordinated with no one on the Crist Committee and that he created  
15 the content of the website on his own from previously published materials. Heffley Response  
16 at 2.

17 The Act limits the amount that may be contributed to Federal candidates, their authorized  
18 committees, and to other political committees, and prohibits candidates and political committees  
19 from accepting contributions in violation of those limits. *See* 2 U.S.C. §§ 441a(a) and 441a(f).  
20 The Act also prohibits corporations from making federal political contributions. 2 U.S.C.  
21 § 441b. Under the Act and the Commission's regulations, these contributions may take the form  
22 of money or "anything of value," the latter signifying "in-kind" contributions. *See* 2 U.S.C.  
23 § 431(8)(A)(i) and 11 C.F.R. § 100.52(d)(1). When a person pays for a communication that is

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1 coordinated with a candidate or party committee, the communication is considered an in-kind  
2 contribution from the person to that candidate or party committee and is subject to the limits,  
3 prohibitions and reporting requirements of the Act, unless exempted under 11 C.F.R. part 100,  
4 subpart C or E. *See* 11 C.F.R. § 109.21(b). One of the specific exemptions contained in subpart  
5 C is uncompensated internet activity by individuals including, for example, "creating, hosting or  
6 maintaining a website," which is not included in the definition of "contribution." 11 C.F.R.  
7 § 100.94.

8 In general, a payment for a communication is "coordinated" if it is made in cooperation,  
9 consultation or concert with, or at the request or suggestion of, a candidate, a candidate's  
10 authorized committee or their agents, or a political party committee or its agents. *See* 2 U.S.C.  
11 § 441a(a)(7)(B); 11 C.F.R. §§ 109.21 and 109.37. Commission regulations establish a  
12 three-prong test to determine whether a communication is coordinated. All three prongs of the  
13 test — payment, content and conduct — must be met for a communication to be deemed  
14 coordinated and, thus, an in-kind contribution. In order to satisfy the payment prong, the  
15 communication needs to be paid for, in whole or in part, by someone other than the candidate,  
16 authorized committee, political party committee or an agent of the above. 11 C.F.R.  
17 § 109.21(a)(1). This prong appears to be met in this matter because Mr. Heffley admits in his  
18 response that he created and paid for the website, the costs of which were "minimal," and that  
19 neither Charlie Crist for U.S. Senate ("Crist Committee") nor the Republican Party of Florida  
20 ("RPOF") paid the costs. Heffley Response at 1. However, it appears that truthaboutrubio.com  
21 fails the content prong of the test for a coordinated communication. To satisfy the content prong,  
22 a communication has to be either an "electioneering communication" or a "public

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1 communication," *see* 11 C.F.R. §§ 109.21(c)(1)-(4) and 109.37(a)(2)(i)-(iii), and this website  
2 appears to be neither.<sup>1</sup> Therefore, the content prong is not met, and the truthaboutrubio.com  
3 website cannot be a coordinated communication, as alleged in the complaint.<sup>2</sup>

4 Further, the Commission's regulations regarding individual volunteer activity over the  
5 internet appear to exempt the costs of the website from the definition of "contribution."  
6 Mr. Heffley's describes his activity as that of "an unpaid blogger who coordinated with no one  
7 on the Crist Committee and created the content of the website on [his] own from previously  
8 published materials." Heffley Response at 2. The Commission's internet regulations provide  
9 that volunteer internet activities by an individual or group of individuals, "acting independently  
10 or in coordination with any candidate, authorized committee, or political party committee" is not

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<sup>1</sup> An electioneering communication is defined as a broadcast, cable or satellite communication that refers to a clearly identified federal candidate and is distributed to the relevant electorate 30 days before the primary election or 60 days before the general election. 11 C.F.R. § 100.29. The website was launched on October 27, 2009, more than 30 days before the primary election date of August 24, 2010. Further, "broadcast, cable, or satellite communication" means a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system. 11 C.F.R. § 100.29. Accordingly, the website is not an electioneering communication.

Nor is <http://truthaboutrubio.com> a public communication. "Public communication," *see* 11 C.F.R. §§ 109.21(c)(2)-(4) and 109.37(a)(2)(i)-(iii), is defined as a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising, which in turn is defined to exclude communications over the internet except for communications placed for a fee on another person's website. 11 C.F.R. § 100.26. The available information does not suggest that either the Crist Committee or the RPOF paid any fees in connection with truthaboutrubio.com. Mr. Heffley states that neither the Crist Committee nor the RPOF paid any of the "very minimal costs for my website" and that Heffley himself did the work for the website on his own time and used freeware to create the site layout. Heffley Response at 1. Neither the Crist Committee nor the RPOF disclosed any payments to Heffley or to any person described in a manner suggesting the website at issue. Because the available information does not indicate that material was placed on the website for a fee, the website does not appear to be a public communication.

<sup>2</sup> Because it appears the content prong is not met, there is no need to discuss at any length the "common vendor" standard of the conduct prong. Mr. Heffley, in his response, states that he "did not talk to [Crist] or anyone with his campaign about this website" and, therefore, had no means to use or convey information about the plans or needs of the candidate or political party. Heffley Response at 1. *See* 11 C.F.R. § 109.21(d)(4).

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1 a contribution by that individual or group of individuals. 11 C.F.R. § 100.94; *see also* Internet  
2 Communications Explanation and Justification, 71 Fed. Reg. 18589, 18603 (April 12, 2006) (the  
3 funds expended by individuals engaging in volunteer internet activities and bloggers to create  
4 and maintain websites do not constitute contributions or expenditures, and the websites  
5 themselves are not subject to the Commission's coordination rules). Therefore, it seems that  
6 Mr. Heffley's activity falls squarely into the internet exemption and is not an in-kind  
7 contribution to the Christ Committee.<sup>3</sup> *See* Heffley Response at 2. As a result, the Commission  
8 finds no reason to believe that Richard Heffley violated 2 U.S.C. §§ 441a(a) or 441b. Further,  
9 the Commission finds no reason to believe Richard Heffley's two companies, Heffley and  
10 Associates, Inc. and Strategic Direction.com, Inc., violated 2 U.S.C. § 441b.<sup>4</sup>

11 The complaint also states that <http://truthaboutrubio.com> did not contain a disclaimer.  
12 *See* 2 U.S.C. § 441d(a). Under the Commission's regulations, disclaimers are required on:  
13 (1) A "public communication," as defined in 11 C.F.R. § 100.26, made by a political committee;  
14 (2) electronic mail of more than 500 substantially similar communications when sent by a  
15 political committee; (3) a political committee website available to the general public; and  
16 (4) a "public communication," as defined in 11 C.F.R. § 100.26, made by any person that

<sup>3</sup> The complaint alleges that Mr. Heffley launched the website with an "undisclosed collaborator." According to the complaint, Mr. Heffley admitted the existence of a collaborator to a reporter but failed to name him/her. Nor does Mr. Heffley refer to any collaborator in his response to the complaint. He does state that he "did not talk to [Crist] or anyone with his campaign about this website." Heffley Response at 1. However, even if the undisclosed collaborator exists and is a member of the RPOI or even the Crist Committee, the Commission's regulations still appear to exempt the website activity from the definition of "contribution." *See* 11 C.F.R. § 100.94.

<sup>4</sup> There are broad allegations in the complaint that Mr. Heffley may have used one or both of his corporations, Heffley and Associates, Inc. and Strategic Direction.com, Inc., to pay for <http://truthaboutrubio.com>, resulting in impermissible corporate contributions. Mr. Heffley indicates in his response that he "did the work for the site on [his] own time and used freeware to create the site layout." Heffley Response at 1. The available information does not suggest any corporate involvement in the website. *See* 2 U.S.C. § 441b(a).

1 contains express advocacy, solicits a contribution, or qualifies as an "electioneering  
2 communication" under 11 C.F.R. § 100.29. 11 C.F.R. § 110.11(a); *see also* Internet  
3 Communications Explanation and Justification, 71 Fed. Reg. 18589, 18602 (April 12, 2006).  
4 Because <http://truthaboutrubio.com> is an internet communication and neither RPOF nor the Crist  
5 Committee appears to have paid for the costs of the website, it appears that a disclaimer is not  
6 required. Therefore, the Commission finds no reason to believe that Richard Heffley violated  
7 2 U.S.C. § 441d.

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